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Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
)
Indoor Sports and Entertainment Radio Service)
)
Amendment of Rules to Create New Radio Service)

MM Docket No. 99- _____
RM-9682

To: Chief, Mass Media Bureau

REPLY COMMENTS

The NATIONAL HOCKEY LEAGUE ("NHL"), by its attorneys, and pursuant to the Commission's Public Notice *Petition for Rulemaking, Indoor Sports And Entertainment Radio Service*, DA 99-1337 (Released July 8, 1999) (the "*Public Notice*"), herewith submits the following reply comments, in connection with the NHL's "Petition for Rule Making" dated April 2, 1999 ("Petition").

Introduction

The Commission can draw one basic and fundamental conclusion from the comments filed in this proceeding – there is no technical reason why the NHL's ISERS proposal cannot work.

Inner Ear Communications, Inc.

Inner-Ear Communications, Inc. ("Inner Ear") filed a "Motion to Strike and Opposition" ("Inner Ear Opposition"). To the extent Inner Ear has requested the Commission to strike the Petition, such a filing is procedurally inappropriate. The Commission's July 8, 1999 Public Notice stated that "[i]nterested parties may file with the Office of the Secretary statements opposing or supporting" the Petition. The Commission concluded that the Petition warranted public comment. The Commission authorized only

the filing of “statements opposing or supporting” the Petition. Neither the *Public Notice* nor Section 1.405(a) of the Commission’s rules authorizes the filing of anything entitled or in the nature of a “motion to strike.” The NHL therefore requests that the Commission disregard Inner Ear's request to strike the Petition.

Inner Ear indicates that it has developed a method for “transmitting audio signals to spectators at events” through “systems of broadcast antennas, strip antennas or loop antennas.” Inner Ear Opposition at 5. It is quite clear that Inner Ear is only concerned with advancing its private interests and with foreclosing competition. The fact that Inner Ear may have experimented with some transmission method does not preclude the NHL from petitioning the Commission to initiate a rulemaking proceeding to authorize a new radio service that uses conventional transmission technology and radio receivers within indoor facilities. Nor does Inner Ear's experimentation preclude the Commission from issuing the *Public Notice* concerning the Petition, inviting public comment, issuing a notice of proposed rulemaking, and ultimately adopting rules that will permit many entities in addition to the NHL to operate ISERS stations.

The Office of The Commissioner of Baseball

The Office of The Commissioner of Baseball (the “Commissioner”) filed a Statement in support of the ISERS petition, on behalf of “the thirty clubs engaged in the professional sport of major league baseball.” Because many of those clubs play in outdoor facilities, the Commissioner urges the Commission to consider “the possibility of establishing an on-site sports and entertainment radio broadcast service that is not limited to wholly indoor venues – provided that the service can be provided in a way that would not cause objectionable interference.” “Statement of The Office of the Commissioner of Baseball”, p. 2.

The Commissioner's Statement shows the far-reaching potential public interest benefit of the NHL's ISERS proposal. The NHL does not seek to foreclose any appropriate use of the technology or the concept. The use of radio to provide service to baseball fans at outdoor facilities deserves the Commission's attention, but not in a manner that delays or postpones consideration of the NHL's unique *indoor* ISERS proposal.

REC Networks

REC Networks filed comments in support of the Petition. REC Networks performed independent studies and field-testing and concluded that properly designed ISERS stations will not cause objectionable interference.

REC Networks suggested a very useful concept that might meet concerns expressed by others. Specifically, the Commission could impose a condition or requirement that ISERS stations operate only within indoor facilities that meet a minimum seating capacity and only for certain types of events. "Comments of REC Networks," Para. 4; "Revised Comments of REC Networks," Para. 4. REC Networks' 10,000 seated person standard is certainly reasonable. REC Networks suggested limiting the use of ISERS stations to professional or amateur sports. Such a restriction might unnecessarily limit ISERS, which is why the NHL originally included "Entertainment" in its proposal. Nevertheless, the NHL agrees with the general concept that limiting who can operate ISERS stations will go a long way toward insuring that no objectionable interference will occur to full service broadcast stations.

USA Digital Radio, Inc.

USA Digital Radio, Inc. ("USADR") has pending before the Commission a proposal (RM-9395), known as In-Band On-Channel ("IBOC"), to implement Digital Audio Broadcasting ("DAB") and to convert radio from analog to digital. The

Commission has invited comment on IBOC. The Commission has taken no further action on the USADR IBOC petition. The Commission has not yet adopted any technology or procedure for the conversion of radio from analog to digital. At this time, there is no permanent regulatory authority to transmit digital broadcast signals.

USADR filed Comments to make one point – that ISERS should not interfere with the implementation of DAB. The NHL shares this concern. USADR acknowledges the NHL’s support for digital radio. “Comments of USA Digital Radio, Inc.” at 4. The NHL requested that ISERS stations be allowed to transmit digital signals once the Commission adopts DAB rules. Petition at 9.

USADR's Comments actually demonstrate the value and importance of ISERS both during the conversion and in the all-digital environment. USADR states that “IBOC DAB will significantly enhance the listening experience for AM and FM radio. . . . Listeners will perceive greatly enhanced overall quality to increase their enjoyment from radio broadcasting.” “Comments of USA Digital Radio, Inc.” at 3. USADR adds that its “IBOC DAB system is designed to improve audio quality through both higher fidelity and increased reliability of the broadcast signal. The result will be an enhanced listening experience.” *Id.* at 5. The NHL wants to provide fans attending NHL professional hockey games with an enhanced listening experience and the audio “robustness” acclaimed by USADR. Every description of digital signal transmission technology highlights its superior and refined ability to control and eliminate objectionable interference and to provide superior audio quality. For these reasons, the NHL wholeheartedly supports the implementation of DAB.

The NHL also notes USADR's Comments that, because its technology will allow radio stations to support both analog and digital broadcasting, “existing analog

radios will remain useful as consumers acquire DAB receivers in the normal course of equipment replacement cycles. Moreover, USADR projects that DAB receivers will be only incrementally more expensive than analog receivers.” *Id.* at 2-3. USADR has touched upon the very heart of ISERS – the use of existing, consumer-quality, readily-available, relatively inexpensive, universally-useful, off-the-shelf radio receivers. When permitted by the FCC ISERS stations can be constructed as all-digital facilities and can therefore help implement the conversion from analog to digital and the investment by the public in digital radio receivers. Digital ISERS broadcasts can serve as demonstrations to show the listening public the benefits of digital transmission technology and to encourage the deployment of digital radio receivers.

National Public Radio, Inc.

National Public Radio, Inc. (“NPR”) contends that ISERS stations “would create interference with existing and future full-service radio and FM translator stations.” “Statement of National Public Radio, Inc.” at 1. However, NPR provides no evidence that such interference would occur. To the contrary, the NHL's own experience is that through careful frequency selection, careful antenna placement inside the arena, and with the proper power level, objectionable interference will not occur. NPR contends, again without any support, that ISERS stations “would have a negative impact upon digital audio broadcasting signals.” *Id.* at 2. However, as noted above, the NHL supports DAB and ISERS would help the conversion from analog to digital. Finally, NPR contends, without support, that “the cost of administering this new service would be substantial.” *Id.* The shibboleth of “administrative costs” is used as a scare tactic to avoid serious discussion about how to manage, control and avoid unnecessary costs, when there are clear public interest benefits involved. The NHL submits that the demonstrated public interest benefits

of ISERS can co-exist with existing broadcast services, without experiencing unnecessary costs and burdens, if there is meaningful focused discussion.

NPR apparently would like to preclude its membership from operating ISERS stations. That is NPR's prerogative, although the NHL can easily envision how NPR member stations could make valuable use of such an opportunity. NPR claims that the NHL would not “qualify” for a non-commercial educational broadcast license. NPR Statement at p. 2. However, NPR may not realize that the NHL is a non-profit organization. The NHL sees no reason why it would be ineligible to hold a license for a non-commercial educational broadcast station under Section 73.503 of the Commission’s rules. More fundamentally, the NHL sees no reason why ISERS stations should be “excluded from the reserved band.” *Id.* at 2. It may be that the Commission would want to limit commercial matter on ISERS stations in the reserved band, but if reserved channels are available and their use will not cause objectionable interference to existing facilities there is no apparent reason to restrict ISERS opportunities for non-profit organizations.

Finally, NPR wants the FCC to impose “content and other regulatory requirements for the proposed service similar to those applicable to other users of the same spectrum.” *Id.* at 2. Yet NPR fails to explain why all users of the same spectrum must be treated the same. Why would an NHL Member Club transmitting to hockey fans inside the arena for four to five hours per night, three or four nights per week, during the hockey season, need to meet the same requirements as a full-service broadcast station transmitting 24 hours per day, seven days per week at high power to the general public? NPR does not provide an answer.

National Association of Broadcasters

The National Association of Broadcasters (“NAB”) filed comments in opposition to the ISERS petition. The NAB states that it “serves and represents the American broadcasting industry.” The ironic thing about the NAB's comments is that as an organization that promotes the immediacy and vibrancy of radio it suggests that the NHL provide hockey fans with a “better-edited and lower-priced printed game program” and for non-English speaking persons that it provide “secondary language printed game programs” and foreign language “public address announcers.” NAB Comments, p. 3-4. The NAB fails to acknowledge that the message it promotes to the Commission, Congress and the public about the power of radio applies equally to the environment of the hockey arena.

The NAB acknowledges “the difficulty licensed broadcast signals have penetrating the concrete and steel of arenas” and “the difficulty that some broadcast signals may have when it comes to penetrating sports arenas,” NAB Comments, p. 4. However, the NHL did not file its Petition to “remedy” those problems experienced by radio stations and NAB members. Rather, the NHL filed its Petition in recognition of that phenomenon, as well as the fact that broadcasters do not program their radio stations for the audience inside the hockey arena. Broadcasters program their radio stations for the general public outside the hockey arena.

The NAB suggests that existing regulations are sufficient, citing the use of FM boosters and Part 15 of the Commission's rules. An FM booster cannot originate any programming, and it must receive off-air and rebroadcast the primary station. That radio broadcast station is not programmed primarily for the audience inside an NHL arena. In the NHL's experience, Part 15 has proven to be unsatisfactory. The use of “multiple Part 15 devices within each arena” as the NAB suggests, NAB Comments at 4-5, is very costly

and inefficient, and oftentimes ineffective, compared with a single low-power well-placed and well-designed ISERS station.

The NAB faults the NHL for a “lack of multiple testing”. NAB Comments at 9. However, the NHL provided the Commission with the results of every test that it conducted, and the NHL will not conduct illegal tests without Commission authorization. The NHL would be delighted to conduct ISERS experiments in all of the NHL arenas throughout the forthcoming season and provide the Commission with those results.

Gregory Deieso and Micro Radio Comments
G. William Ford and Ford Sports International

Gregory Deieso and Micro Radio (collectively “Deieso”) and G. William Ford and Ford Sports International (collectively “Ford”) filed virtually identical statements both entitled “Comments In Opposition To The Public Notice For Petition For Rulemaking” (“Deieso/Ford Comments”). Therein Deieso and Ford state that “Gregory Deieso represents that since 1992 he has conducted low power broadcasts for,” among others, the NHL and Major League Baseball, and that he has filed with the Commission reports “outlining use, equipment, and engineering reports.” Deieso and Ford contend that “Gregory Deieso has worked with the NHL since 1996” and used “his low power FCC authorization”¹ for “two Stanley Cup Championships.” Both Deieso and Ford claim that “[t]his has been documented through reports submitted to the FCC.” Deieso/Ford Comments, p. 1.

Deieso is not employed by or engaged in any capacity by the NHL. Deieso has not “conducted low power broadcasts” for the NHL or used “his low power FCC

¹ The Experimental Radio Service authorization KF2XBF expired July 1, 1997. Deieso tendered on May 2, 1997 an application for renewal of that authorization (File No. 5379-EX-R-97), which remains pending before the Commission.

authorization” for any NHL event since the January 1996 All-Star game. Deieso was not involved or associated in any way with the experimental broadcasts that the NHL conducted in June 1998, during the Stanley Cup Playoffs and Finals, pursuant to the FCC experimental station authorization WN2XHL, as described in detail in the NHL's September 1, 1998 *Report Of The National Hockey League*. There were no indoor arena broadcasts, conducted by either the NHL or anyone else, at any Stanley Cup games prior to or subsequent to those June 1998 Stanley Cup games. Deieso has never been involved, on behalf of or with the authority of the NHL, in any way with any Stanley Cup events or activities. The NHL has found no reports to the Commission indicating that Deieso's FCC authorization was used at any Stanley Cup events. The statements by Deieso and Ford in their comments are incorrect.

Deieso and Ford fail to note that when the Commission adopted its “Notice Of Proposed Rule Making” in the Low Power Radio Service proceeding (MM Docket No. 99-25),² it specifically declined to include in that proceeding Deieso’s proposal (RM-9246) for “event broadcast stations” or to invite further public comment on Deieso's proposal. The Commission said that “[t]he proposed usage of the facilities and the spectrum rights for such an ‘event’ service are sufficiently different from what is contemplated in establishing an LPFM service in this proceeding, that those issues, and the Deieso petition, are better examined separately from this proceeding.”³

The Deieso proposal is “sufficiently different” from the NHL’s proposal, most notably because RM-9246 encompasses “outdoor events,” and the NHL proposal is

² *Creation of a Low Power Radio Service*, 14 FCC Rcd. 2471 (Released February 3, 1999).

³ *Id.* at 2472, n.3.

limited to indoor broadcasts. The NHL proposal does not preclude the Deieso proposal. Therefore, each proposal is better examined separately. Deieso can "request the advancement of RM-9246" without becoming involved in this proceeding.

WHEREFORE, the NHL submits that the comments filed in this proceeding support prompt adoption and release of a Notice of Proposed Rule Making, and the NHL requests that the Commission issue such an NPRM at the earliest opportunity.

Respectfully Submitted,

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August 24, 1999

CERTIFICATE OF SERVICE

I, Harold K. McCombs, Jr., do hereby certify that I have caused to be served by mail, First Class postage prepaid, this 24th day of August, 1999, copies of the foregoing "Reply Comments" on the following persons:

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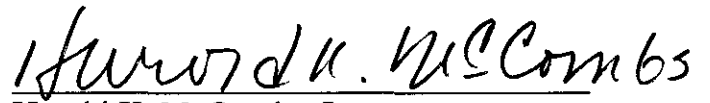
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